

**TOWN OF FOUNTAIN HILLS
MINUTES OF THE EXECUTIVE AND REGULAR SESSIONS OF THE
FOUNTAIN HILLS TOWN COUNCIL
AUGUST 18, 2016**

EXECUTIVE SESSION

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Kavanagh called the Executive Session to order at 5.30 p.m. in the Fountain Conference Room - 2nd Floor.

AGENDA ITEM #1 - ROLL CALL AND VOTE TO GO INTO EXECUTIVE SESSION: PURSUANT TO : (1) A.R.S. § 38-431.03(A)(3), DISCUSSION OR CONSULTATION FOR LEGAL ADVICE WITH THE ATTORNEY OR ATTORNEYS OF THE PUBLIC BODY, AND (2) A.R.S. § 38-431.03(A)(4), DISCUSSION OR CONSULTATION WITH THE ATTORNEYS OF THE PUBLIC BODY IN ORDER TO CONSIDER ITS POSITION AND INSTRUCT ITS ATTORNEYS REGARDING THE PUBLIC BODY'S POSITION REGARDING CONTRACTS THAT ARE THE SUBJECT OF NEGOTIATIONS, IN PENDING OR CONTEMPLATED LITIGATION OR IN SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION (SPECIALLY, THE COPPER RIDGE DEVELOPMENT AGREEMENT).

Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Henry Leger, Councilmember Alan Magazine, Councilmember Cecil Yates, Councilmember Dennis Brown, and Councilmember Nick DePorter. Town Manager Grady E. Miller, Town Attorney Andrew McGuire, Interim Development Services Director Robert Rodgers and Acting Town Clerk Nancy Walter were also present.

Councilmember DePorter **MOVED** to go into Executive Session and Councilmember Yates **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (6-0), by those present.

Councilmember Cassie Hansen attended by phone beginning at 5:37 p.m.

AGENDA ITEM #2 - ADJOURNMENT.

The Mayor Kavanagh adjourned the Executive Session without objection at 6:01 p.m.

REGULAR SESSION

* **CALL TO ORDER AND PLEDGE OF ALLEGIANCE**

Mayor Kavanagh called the meeting to order at 6:30 p.m. in the Fountain Hills Town Hall Council Chambers.

* Mayor Kavanagh announced that today with them was Dr. Bobby Brewer, North Chapel Community Church.

* **ROLL CALL** - Present for roll call were the following members of the Town Council: Mayor Linda Kavanagh, Vice Mayor Henry Leger, Councilmember Nick DePorter, Councilmember Dennis Brown, Councilmember Cecil Yates, and Councilmember Alan Magazine. Town Manager Grady E. Miller, Town Attorney Andrew McGuire and Town Clerk Bevelyn Bender were also present.

Councilmember Cassie Hansen attended by phone.

* **MAYOR'S REPORT**

- i) **ROTATION OF THE VICE MAYOR POSITION TO COUNCILMEMBER NICK DEPORTER, PURSUANT TO SECTION 2-2-2 OF THE FOUNTAIN HILLS TOWN CODE, THAT EACH MEMBER OF THE COUNCIL, EXCEPT THE MAYOR, SHALL SERVE AN EIGHT-MONTH TERM AS VICE MAYOR AND SHALL PERFORM THE DUTIES OF THE MAYOR DURING HIS ABSENCE OR DISABILITY.**

Mayor Kavanagh thanked Councilmember Leger for serving the last eight months and welcomed Vice Mayor DePorter.

* **SCHEDULED PUBLIC APPEARANCES/PRESENTATIONS**

- i) **MAYOR KANANAGH MAY REVIEW RECENT EVENTS ATTENDED RELATING TO ECONOMIC DEVELOPMENT.**

Mayor Kavanagh did not have a report and introduced Councilmember Yates to give an update on his recent domestic violence meeting.

Councilmember Yates stated that recently he attended the meeting with the Maricopa County Governments and noted they had collected all the information needed from the municipalities to create a list of items the group would be addressing such as “stalking” and what alternatives people had who were victims and what help was available for those involved in domestic violence or “stalking”.

- ii) **THE MAYOR WILL READ A PROCLAMATION DECLARING AUGUST 21-27, 2016, NATIONAL EMPLOYER SUPPORT OF THE GUARD AND RESERVE WEEK IN THE TOWN OF FOUNTAIN HILLS.**

Mayor Kavanagh read the proclamation (available on line or in the office of the Town Clerk) that supported employer’s support for the guard and reserve week. Mayor Kavanagh declared August 21-27, 2016 as National Employer Support of the Guard and Reserve week in Fountain Hills.

CALL TO THE PUBLIC

Mayor Kavanagh asked if there were any requests to speak and Town Clerk Bevelyn Bender answered there were no requests received.

CONSENT AGENDA

AGENDA ITEM #1 - CONSIDERATION OF APPROVING THE TOWN COUNCIL MEETING MINUTES FROM JUNE 14 AND JUNE 16, 2016.

AGENDA ITEM #2 - CONSIDERATION OF APPROVING A COOPERATIVE PURCHASE AGREEMENT WITH ACE ASPHALT, FOR VARIOUS PARKING LOT MAINTENANCE AND STRIPING, IN AN AMOUNT NOT TO EXCEED \$88,000.00, OF WHICH \$10,000.00 IS AN OWNER’S CONTINGENCY THAT SHALL BE UTILIZED AT THE TOWN’S SOLE DISCRETION.

AGENDA ITEM #3 - CONSIDERATION OF APPROVING THE COPPERATIVE PURCHASING AGREEMENT (C2017-034 BETWEEN THE TOWN OF FOUNTAIN HILLS AND BEL-AIRE MECHANICAL, IN AN AMOUNT NOT TO EXCEED \$169,250 (INCLUDES FOUR 1-YEAR RENEWALS), FOR HVAC MAINTENANCE AND REPAIRS.

AGENDA ITEM #4 – CONSIDERATION OF APPROVING AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT WITH BROWN & ASSOCIATES, TO INCREASE THE FY15/16 CONTRACT (CN 2016-110.1 BY \$10,000 TO COVER ACTUAL COST OF PLAN REVIEW AND INSPECTIONS THROUGH JUNE 30, 2016.

AGENDA ITEM #5 – CONSIDERATION OF APPROVING A SPECIAL EVENT LIQUOR LICENSE APPLICATION FOR THE FOUNTAIN HILLS REPUBLICAN CLUB PICNIC (SUBMITTED BY TAIT ELKIE) TO BE HELD IN THE FOUNTAIN HILLS COMMUNITY CENTER BALLROOMS 3 AND 4, LOCATED AT 13001 N. LA MONTANA DRIVE, FOUNTAIN HILLS, AZ, FROM 4:00 P.M. TO 7:00 P.M. ON SATURDAY, SEPTEMBER 17, 2016.

AGENDA ITEM #6 - CONSIDERATION OF APPROVING A SPECIAL EVENT LIQUOR LICENSE APPLICATION FOR THE FOUNTAIN HILLS SISTER CITIES CORPORATION DINNER (SUBMITTED BY JEAN LINZER) TO BE HELD IN THE GRAND BALLROOM OF THE FOUNTAIN HILLS COMMUNITY CENTER, LOCATED AT 13001 N. LA MONTANA DRIVE, FOUNTAIN HILLS, AZ, FROM 5:00 P.M. TO 8:00 P.M. ON SATURDAY, OCTOBER 8, 2016.

AGENDA ITEM #7 – CONSIDERATION OF APPROVING A SPECIAL EVENT LIQUOR LICENSE APPLICATION FOR THE FOUNTAIN HILLS COMMUNITY THEATER (SUBMITTED BY VAL STASIK) FOR AN ENTERTAINMENT EVENT TO BE HELD IN THE FOUNTAIN HILLS COMMUNITY CENTER BALLROOMS 1 AND 2, AT 13001 N. LA MONTANA DRIVE, FOUNTAIN HILLS, AZ FROM 7:00 P.M. TO 9:00 P.M. ON MONDAY, SEPTEMBER 12, 2016.

AGENDA ITEM #8 - CONSIDERATION OF APPROVING A LIQUOR LICENSE APPLICATION SUBMITTED BY MICHAEL GLENN SCHMIDT, OWNER OF SCHMIZZA, LLA DBA THAT GUY'S PIZZA, LOCATED AT 16948 E. SHEA BOULEVARD, #104, FOUNTAIN HILLS, AZ. THIS IS FOR A SERIES 12 LICENSE (RESTAURANT).

AGENDA ITEM #9 - CONSIDERATION OF APPROVING LANGUAGE THAT WILL APPEAR ON THE PLAQUE FOR THE FRANKLIN DELANO ROOSEVELT STATUE THAT WAS RECENTLY APPROVED.

AGENDA ITEM #10 - CONSIDERATION OF APPROVING A BUDGET TRANSFER IN THE AMOUNT OF \$25,000, FROM THE ADMINISTRATION DEPARTMENT (TOWN MANAGER - PROFESSIONAL FEES), TO THE MUNICIPAL COURT (COURT OPERATIONS – SALARIES – PART-TIME), TO COVER BUDGET OVERAGES FOR FISCAL YEAR 2015-16.

AGENDA ITEM #11 - CONSIDERATION OF APPROVING A BUDGET TRANSFER IN AN AMOUNT NOT TO EXCEED \$5,000, FROM THE ECONOMIC DEVELOPMENT FUND (DEDAD) TO THE TOURISM FUND (TOURAD), AND TO TRANSFER \$1,700 FROM THE SPECIAL REVENUE FUND (FOR THE ARIZONA OFFICE OF TOURISM GRANT) TO THE TOURISM FUND TO COVER BUDGET OVERAGES FOR FISCAL YEAR 2015-16.

AGENDA ITEM #12 - CONSIDERATION OF RESOLUTION 2016-19, ADOPTING THE TOWN OF FOUNTAIN HILLS GRANT ADMINISTRATION POLICY, DATED AUGUST 18, 2016.

AGENDA ITEM #13 - CONSIDERATION OF APPROVING RESOLUTION 2016-18, A MODIFICATION TO THE INTERGOVERNMENTAL AGREEMENT WITH THE ARIZONA DEPARTMENT OF REVENUE RELATING TO ADMINISTRATION OF TRANSACTION PRIVILEGE TAX.

AGENDA ITEM #14 - CONSIDERATION OF APPROVING RESOLUTION 2016-21, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN THE CERTAIN PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR PROPERTY LINE OF ESCONDIDO HEIGHTS CONDOMINIUMS (A RE-PLAT OF PLAT 432, BLOCK 2, LOT 3) (15075 N. ESCONDIDO DRIVE), AS RECORDED IN BOOK 1271, PAGE 35, RECORDS OF MARICOPA COUNTY, ARIZONA. (EA2016-02)

AGENDA ITEM #15 - CONSIDERATION OF APPROVING RESOLUTION 2016-23, ABANDONING WHATEVER RIGHT, TITLE, OR INTEREST THE TOWN HAS IN THE CERTAIN PUBLIC UTILITY AND DRAINAGE EASEMENT LOCATED AT THE REAR AND A PORTION OF THE EASTERLY SIDE PROPERTY LINE OF PLAT 213, BLOCK 1, LOT 27 (15027 NORTH BRISTOL BAY), AS RECORDED IN BOOK 155, PAGE 24, RECORDS OF MARICOPA COUNTY, ARIZONA. (EA2016-04)

Councilmember Yates **MOVED** to approve the Consent Agenda as listed and Councilmember Magazine **SECONDED** the motion.

A roll call vote was taken with the following results:

Mayor Linda Kavanagh	Aye
Vice Mayor Nick DePorter	Aye
Councilmember Dennis Brown	Aye
Councilmember Cecil Yates	Aye
Councilmember Cassie Hansen	Aye
Councilmember Alan Magazine	Aye
Councilmember Henry Leger	Aye

The motion **CARRIED UNANIMOUSLY** (7-0).

REGULAR AGENDA

AGENDA ITEM #16 – CONSIDERATION OF THE PARK PLACE, PHASE I CONCEPT PLAN TO ALLOW THE DEVELOPMENT OF TWO BUILDINGS WITH APPROXIMATELY 35,000 SQ FT OF COMMERCIAL/RETAIL SPACE AND 230 RESIDENTIAL APARTMENTS ON 6 ACRES LOCATED AT 16725 & 16845 E. AVENUE OF THE FOUNTAINS. (CASE #CP2016-02).

Town Manager Grady Miller introduced Interim Development Services Director Robert Rodgers who gave a presentation followed by the applicant who would be available to answer questions.

Mr. Rodgers stated that an application request for approval was received from Bart Shea, N-Group, LLC for Plat 208, Block 2, Lot 1A and Plat 208, Block 7, Lots 5A and 5C to construct a mixed use development project on the vacant land along the Avenue of the Fountains, between Saguaro Boulevard and Town Hall/Community Center complex. Mr. Rodgers reviewed information contained in a PowerPoint presentation (available on-line or in the office of the Town Clerk). Mr. Rodgers pointed out that the zoning, General Plan Amendments and replats for this property had already been approved and this request would be for Phase I involving site design and would allow the applicants to submit construction drawings for building permit approval. He continued that Lot 5C contained the main access drive off Verde River Drive and included both buildings, the associated driveways and parking areas, the Avenue of the Fountain streetscape improvements, a pocket park along the avenue, public Wi-Fi, two pools and other site improvements in approximately 5.4 acres excluding any off-site work areas. Buildings C and D contain 115 apartment units and 15,752 square feet of commercial space each and are to be four stories tall with a maximum height of 54' above natural grade as approved in the Park Place Development Agreement. Mr. Rodgers added that off-site work would include a new parking lot on Town property, Avenue of the Fountain streetscape improvement to match the north side of the avenue, crosswalk ramadas, and striping for on-street parking on Verde River Drive and Paul Nordin Parkway, and public art. Reserved residential parking spaces must be on-site and staff had reviewed the Concept Plan and determined that all criteria had been met. Mr. Rodgers stated that the architectural design was a modern southwestern design with ground floor commercial office, retail and restaurant space with three upper floors containing 1, 2, 3 bedroom apartments with 2nd story parking decks and a community pool area.

Mr. Rodgers stated that the Planning and Zoning Commission voted to approve the Park Place Phase 1 Concept Plan and to forward a recommendation to Town Council to approve subject to the following stipulations. The applicant had registered objections to stipulations 1, 2, 3, 4, 5 and 12.

1. The applicant shall submit Site Improvement Plans. All utilities and drainage features must be installed and functional as shown on the improvement plans and approved by the Town Engineer prior to the issuance of a Building Permit for vertical construction.
2. No Certificate of Occupancy shall be issued prior to the completion of all site improvements as depicted and approved. Said improvements must be approved by both the Town Engineer and the Planning and Zoning Administrator.
3. No Building Permit shall be issued for Phase I prior to the applicant submitting a plan to the contracted 3rd party plan review and inspection firm for review and approval which demonstrates that the on-site residential and commercial parking requirements outlined in the Park Place Development Agreement.
4. No Certificate of Occupancy shall be issued prior to the completion of all streetscape improvements, ramadas, and the pocket park which are associated with Phase I as required by the approved Park Place Development Agreement.
5. The applicant shall submit an amended Concept Plan showing any and all notes and/or revisions required by this decision to the contracted 3rd party plan review and inspection firm amended and approved Concept Plan shall be submitted with any and all building permit applications for this project.
6. Prior to the issuance of a Certificate of Occupancy, the applicant shall comply with any requirements of the Fountain Hills Sanitary District.
7. Prior to the issuance of a Certificate of Occupancy, the applicant shall comply with any requirements of the Fountain Hills Fire Department.
8. Subject to the applicants fulfilling the Public Art requirement pursuant to the requirements outline in Section 19.05.1 of the Fountain Hills Zoning Ordinance, as modified by the approved Park Place Development Agreement.
9. Subject to the findings and recommendations contained in the July 2016, Traffic Impact Analysis prepared by Kimley-Horn and titled, "SWC Saguardo Boulevard and Avenue of the Fountains, Fountain Hill, Arizona".
10. Subject to the conclusions and recommendations contained in the July 2016, Parking Analysis prepared by Kimley-Horn and titled, "Park Place, Saguardo Boulevard and Avenue of the Fountains, Fountain Hills, Arizona". Subject to any remaining requirements contained in the approved Park Place Development Agreement.
11. Subject to the intersection remediation recommendation listed in the Town Engineer's memo of July 27, 2016.

Mr. Rogers stated that staff recommended that Town Council approve the Park Place, Phase I Concept Plan subject to the stipulations requested by the Planning and Zoning Commission dated July 28, 2016, and amended by staff's recommendations.

Mayor Kavanagh asked the applicant to address the Council.

Mr. Shea stated the Development Agreement covered the Planning and Zoning stipulations one through five and number twelve. Mr. Shea addressed each stipulation as follows:

1. A third party inspection had been negotiated and would approve Certificates of Occupancy on buildings. He requested the stipulation end with "improvement plans" because the Town Engineer was not involved and the issue was covered in the Development Agreement under 6-2-H, 6-2-J and 6-2-E.
2. The third party would cover this stipulation as noted in the Development Agreement and asked to strike the last paragraph.
3. The applicant had already submitted a parking analysis vetted by a third party and was reviewed by the Town's third party and found complete and approved.
4. Infrastructure as stated in the Development Agreement had been addressed without a bond and the area would be returned to its original site and completed first then moving east. This could affect receiving a Certificate of Occupancy and had already been addressed.
5. Mr. Shea did not understand the language and felt all parties were past that phase and covered.

Mr. Shea agreed to stipulations six through eleven.

12. Traffic Engineer noted that the left hand turn pocket lane from Paul Nordin into the shopping center on the east side of Saguaro could not accommodate stacking and could cause a two minute stop in traffic currently as addressed in the traffic analysis. Mr. Shea would like to move this issue to the third concept plan and would then agree to another traffic analysis for that area to see if that area was impacted and then possibly remove the median.

Mayor Kavanagh asked for questions or comments from Council.

Councilmember Magazine asked Mr. Shea if he discussed the stipulations at the Commission meeting and Mr. Shea answered he did. Mr. Shea explained that the stipulations were not worded the same as the Development Agreement and he believed were in conflict. Councilmember Magazine stated his support for the Commission and staff and recommended that staff review Mr. Shea's concerns and come back to Council.

Councilmember Brown requested Town Attorney McGuire and Mr. Rodgers give Council clarification on each stipulation.

Councilmember Brown expressed that stipulation number one was usually required in a subdivision project when all utilities were required to be placed on site before starting the project. He noted that this project would be built in phases and would evolve and felt this stipulation needed to be removed.

Councilmember Brown noted on stipulation number two that after attending 90% of the meetings with the developer and staff that the third party would complete all sign-offs and approve the Certificates of Occupancy. Mr. Rodgers agreed with Councilmember Brown. Councilmember Brown asked how the Town Engineer and Zoning Administrator were added back into the plan. Mr. Rodgers responded that it was standard language and the third party inspectors were acting for the Town Engineer and under his authority. Mr. Miller asked Mr. Rodgers if there was a difference in the phrase "as accepted" or "approved". Mr. Rodgers answered they were the same.

Councilmember Leger felt the stipulation was redundant and should not be added since there was a Development Agreement and he asked Mr. McGuire to explain the rational of stipulation number one. Mr. McGuire answered that this was not a legal question but an on-site question and what he understood was that Mr. Shea requested removal of the language "as shown on the improvement plans" since other entities have the knowledge to regulate the building process over and above the third party inspectors. Mr. McGuire agreed with Mr. Shea and his issue with the second sentence.

Councilmember Brown asked what requirements in the parking analysis had not been met and were not addressed in the Development Agreement. Mr. McGuire answered that this stipulation ensured that what had been approved in the parking analysis would be completed at the concept stage and was also translated onto the building plans.

Councilmember Brown stated that stipulation number three had the same concept as stipulation number one and was not practical to be required before the project was completed and before a Certificate of Occupancy was issued due to the last items to be completed being the street improvement and landscaping across the front of the project and again due to this being an evolving project. Councilmember Brown suggested that Certificate of Occupancy be given when streetscapes are completed on that part of the units and accepted.

Councilmember Hansen expressed concerns for needed scaffolding on developing sites and the safety for the areas where units had been completed. Mr. Shea expressed that there would be a tunnel assembly placed in the completed areas to allow the sidewalk to stay open and address safety concerns. Mr. Shea added that the building site would be monitored by their insurance companies and they would uphold OSHA requirements.

Councilmember Magazine questioned the issue of scaffolding and when the project would receive the Certificate of Occupancy. Councilmember Brown explained that the scaffolding would be gone so the developer could complete the landscaping and go to the next phase. Mr. Shea added that the total completed section of the building could take five months and that would be five months of lost income and taxes. Councilmember Brown asked Mr. Shea if it was possible to complete the project 1/3 at a time so to not hold up the project. Mr. Shea answered yes, but would have to maintain safe living for residents during construction. Mr. McGuire asked if a temporary Certificate of Occupancy

could be issued and Councilmember Brown agreed. Mr. McGuire requested language that could be forwarded to the 3rd party inspector and staff on this issue.

In response to a question from Councilmember Alan Magazine Mr. McGuire clarified that no Certificate of Occupancy would be issued prior to the streetscape improvement; Mr. McGuire reiterated his request for language on how a portion of the building could be divided, so staff knew how to address the issue. Councilmember Brown asked Mr. Shea if the building could be split up into thirds upon completion and he stated that the Zoning Ordinance already did not allow him to go any further with a Certificate of Occupancy until Mr. Rodgers signed off on the landscaping for that section of the building; so staff had control.

Mr. McGuire asked Councilmember Brown if he expected a temporary Certificate of Occupancy issued for the completed portion of a building only. Councilmember Brown answered that a final Certificate of Occupancy could be issued for that portion or a temporary Certificate of Occupancy would work also. Mr. McGuire agreed since the hallways were a single piece and the elevator was mid-way down the building. Mr. Shea added there were three stairways and possibility a fourth and two elevators in the buildings. Mr. McGuire stated that it was important that staff knew where to make the division point. Mr. Shea added that the 3rd party building official would not allow him to go any further as code allowed to make safe working conditions for renters with a safe entrance and exist.

Councilmember Cecil Yates asked Bart Shea to explain what would happen under the International Building Code (IBC) placed on all concept plans. Mr. Shea stated he could not proceed on the project any further than the IBC allowed. Mr. Shea requested the stipulation be deleted since this action was also covered under the IBC, the Town Building Ordinance, the Town Ordinances for inspections, and until everyone signed off on the project. Councilmember Brown agreed that Mr. Shea's point was valid and Councilmember Yates agreed the stipulation needed to be removed due to the three levels of inspections that were in place.

Councilmember Brown did not understand stipulation number five and if Council approved the concept plan at this meeting and they use a 3rd party review, why would the applicant have to bring the concept plan back to Council for approval. Mr. Rodgers answered that this stipulation would allow for any additional stipulations requested by Council along with their approval by amendment would then allow Council to review the amended concept plan before the plan was given to the 3rd party. Mr. Rodgers stressed this was only if Council amended the plan and it appeared Council would not, so this stipulation would not apply. Councilmember Brown stated he understood and Mr. McGuire added this stipulation was a catch all and addressed any action over and above the Planning and Zoning Commission's action. Councilmember Brown agreed that Council should leave the stipulation as stated and Mr. McGuire agreed.

Councilmember Yates addressed stipulation number twelve and asked Mr. Rodgers if he had an issue with addressing the left turn lane issue and stacking of cars until the Phase 3 concept plan was submitted. Mr. Rodgers stated he did not have a problem with this recommendation and Councilmember Yates encouraged Council to move this stipulation to the time when concept plan Phase 3 was submitted.

Mr. McGuire clarified the requested changes in the Concept Plan stipulations as follows:

Stipulation #1: Stipulation ends mid-sentence after the word "plans" in the sentence line.

Stipulation #2: Delete 2nd sentence.

Stipulation #3: Leave as written since it was just translating the concept plan issues to the building plans.

Councilmember Yates questioned the timing of the parking review. Councilmember Brown requested verification that they would need to take that information from the concept plans and transfer it to the building plans and Mr. Shea stated that the action had already been completed as that was what was analyzed. Mr. McGuire clarified that regarding the parking review, we're at concept plan now and we have a parking study that says it works, and what this stipulation is saying now is make sure it shows up on the plans.

Stipulation #4: Stipulation deleted completely.

Stipulation #5: Stipulation was okay as written.

Stipulation #12: Modified to be a Concept Plan Phase 3 requirement.

Mayor Kavanagh asked for speaker cards and Town Clerk Bevelyn Bender stated no cards received.

Councilmember Hansen asked Mr. Rodgers if there were any visual changes on the concept plan. Mr. Rodgers answered that except for a change in the color, as shown on the board submitted to Council this evening for their review. Mr. Shea stated that the colors shown are muted colors and still modern but just a little lighter. Councilmember Hansen also inquired to any changes in elevation or plans. Mr. Shea answered that bedrooms balconies were sticking out a little bit with living room balconies pushed in somewhat and were as tight as possible. Councilmember Hansen clarified the answer that there were no other changes to the plan except for color and Mr. Shea stated that was correct.

Vice Mayor DePorter thanked Councilmember Brown for explaining and helping him understand the stipulations.

Mayor Kavanagh explained to the public that when Council received their packets in advance of this evening and they all had an opportunity to ask questions of staff, which were always available.

Mr. Rodgers requested clarification on stipulation number twelve and asked that Council was not requiring the applicant to redesign, but to re-study the issue during the Phase 3 concept plan. Councilmember Yates answered that Council was removing the requirement off of the concept plan presented tonight and placing the issue to be restudied on Phase 3.

Councilmember Leger expressed that he was not in favor of this project from the beginning due to density, the height and architectural design and features and wanted to ask Mr. Rodgers if the density, height or architectural design had changed recently and Mr. Rodgers answered that nothing had been changed.

Councilmember Brown **MOVED** to approve the Park Place, Phase I Concept Plan subject to the stipulations recommended by the Planning and Zoning Commission, as amended by the staff recommendations in the staff report with the following changes:

Stipulation #1: Stipulation ends mid-sentence after the word “plans” in the sentence line,

Stipulation #2: Delete 2nd sentence.

Stipulation #3: Leave as written since it was just translating the concept plan issues to the building plans.

Stipulation #4: Stipulation deleted completely.

Stipulation #5: Stipulation was okay as written.

Stipulation #12: Modified to be a Concept Plan Phase 3 requirement.

Councilmember Cecil Yates **SECONDED** the motion.

Mayor Kavanagh called for a roll call vote.

Councilmember Alan Magazine	Aye
Councilmember Cassie Hansen	Nay (Stated she felt this was not part of the Town’s vision plan)
Councilmember Cecil Yates	Aye
Councilmember Henry Leger	Nay
Councilmember Dennis Brown	Aye
Vice Mayor Nick DePorter	Aye
Mayor Linda Kavanagh	Aye

The motion **CARRIED** on a vote of (5-2) with Councilmembers Hansen and Leger casting the Nay votes.

AGENDA ITEM #17 – CONSIDERATION OF A SPECIAL EVENT APPLICATION AND FEE WAIVER FOR THE FARM-TO-TABLE EVENT PRESENTED BY FOUNTAIN EVENTS, INC., TO BE HELD AT THE FOUNTAIN HILLS COMMUNITY CENTER AND CENTENNIAL CIRCLE ON SUNDAY, OCTOBER 23, 2016, FROM 11:00 AM – 6:00 PM.

Mr. Miller explained that this request from Events, Inc. was for the approval of a Special Event on October 23, 2016 and a waiver of fees in the amount of approximately \$4,500.00. Mr. Miller introduced Recreation Supervisor Rachael Goodwin who would give the staff report on this item.

Ms. Goodwin explained that the events coordinators were present to answer any questions regarding this event. Ms. Goodwin explained this would be a one-day event called “Farm-2-Table” consisting of dining experiences, farmer’s market style vendors, a demonstration stage with speakers, a pumpkin patch, tractor display, food, trucks, and a beer/wine garden proposed to be held within the Community Center/Centennial Circle and the Community Garden site. Ms. Goodwin continued that this was a two ticket event with one required for the dining experience with local restaurants, and one ticket option for entry to the festival portion. She added that the Special Events Committee had given their pending approval of the application providing all permits were submitted and layout, security and other recommendations were adhered to and the event organizers have also requested a fee waiver of approximately \$3,775 in fees, which did not include the Town’s staff time. Ms. Goodwin stated the committee asked for direction from Council regarding overall fee waivers requested since waiver requests have continued to increase and she noted the impact on staff time, budget, and resources that should be considered when reviewing potential new events.

Ms. Goodwin asked the events coordinator to come forward and explain this event. Christine Colley president of Fountain Hills Events, Inc. explained this was a new event but that this concept was growing across the country for everyone to experience natural foods and they were asking for the Council’s support to use the facilities that were available in the community to hold this event. Ms. Colley noted this first time event did not give the organizers any experience on how many people would attend, but with their advertising they expected 500-1,000 attendees. She added that entry fees would be \$12.00 for adults and \$10.00 for seniors and children were free. Under the motto “Fountain Hills first” local businesses would be asked to participate along with vendors.

Mayor Kavanagh asked for questions from Councilmembers.

Councilmember Yates asked if there were any event information available or a model from other cities or states. Ms. Colley referred the question to Mary Ann Michaels who brought the event to Fountain Hills and was most informed. Ms. Michaels stated this was an all-day event and family friendly that would also included the Library and Museum. She stated that the proceeds would go to support the Community Garden and other proceeds would stay in Fountain Hills.

Councilmember Yates thanked Ms. Michaels for the information and asked the Town Manager what was the typical fee schedule for non-profits. Mr. Miller explained the Town tried to recover their costs on a sliding scale and non-profits as this qualified for were charge at lower rates, which were designed not to be full cost recovery for the Town.

Mayor Kavanagh asked if there were any questions for the applicant or Ms. Goodwin.

Councilmember Hansen felt this would be an amazing event and a win-win for the Town since this organization was known to have great volunteer events and any Town expenditures would be money well spent. Mayor Kavanagh agreed with Councilmember Hansen but commented she had a problem with waiving the fees. In a response to questions by Mayor Kavanagh, Ms. Goodwin confirmed that the Town would be losing rental for the Community Center at \$2,300 at the non-profit rate along with the Centennial Circle rental at \$900.00 in fees. Mayor Kavanagh asked Ms. Goodwin how many hours would also be used in staff time and Ms. Goodwin stated it would be hard to say but maybe 20 hours along with involving the complete staff with pre-set-up and brake-down and additional in-house marketing of the event.

Mayor Kavanagh pointed out the Town’s tight budget, which almost did not fund “Movies in the Park” and the music festival for a total of \$14,000, and she added the Town already gave non-profits a huge discount in fees and waiving the these fees would cut into the Community Services budget that are needed for classes and other activities noting that staff tried to keep classes and activities at a low cost for residents. Mayor Kavanagh also felt since this was open to

everyone and the Town's residents would have to pay to participate along with tax payer's money supporting the event, the idea did not seem right. Mayor Kavanagh expressed that this would be a great event and maybe organizers could get items donated, but for the Town to waive fees could be setting a precedent for the future. She also added that the Town could not keep making exceptions no matter who they were especially since an entry fee of \$12.00 would be charged with another \$60-\$65.00 for the dinner event.

Councilmember Magazine stated Council could not pick and choose among non-profits and Mayor Kavanagh added that at this time the Town treated all non-profits the same.

Ms. Goodwin stated that there were rates for commercial and non-residents and then approximately a 50% discount for residents and non-profits and Mayor Kavanagh added at a 50% discount the fees still did not cover costs and Ms. Goodwin added that they attempt to cover.

Councilmember Brown understood the Mayor's points and agreed the Town had a tight budget issue, but to have a start-up event and the possibility of it becoming an annual event along with the event being well thought out, he would possibly support a one-time waiver to get them going.

Councilmember Leger asked Ms. Goodwin how long she had been employed with the Town and she stated two years and then he asked her if she ever waived fees and she stated long-standing events that had a history in Town fees were waived such as the "October Fest" and "St. Patrick's Day" events. Mr. Miller added that these events were considered "Legacy Events". Councilmember Leger noted it was like a partnership and he agreed with Councilmember Brown and supported helping the event get started and then next year they could renegotiate the fees.

Vice Mayor DePorter questioned waiving fees when an entry fee would be charged and to double-tap the residents made him feel uneasy and he added that if it were a free event for the Town's residents he would possibly reconsider. Vice Mayor DePorter stated he agreed with Councilmember Magazine that this was a policy and every non-profit was worthy and \$3,700 should not break the event due to the projections and expressed due to the cost of staff time involved he could not support waiving the fees at this time.

Councilmember Hansen stated that Councilmember Brown made a good point that this was seed money and it was worth looking at the benefits to the Town and she felt that these requests should be reviewed on a case by case basis. She added this was a fund raiser for the Community Garden and a positive thing to do for one-year.

Councilmember Yates stated that the Town needed to re-evaluate the policy noting he was fearful for setting a precedent with this request. He suggested the option of having the event pay at the end depending on how well the event does with their profits or perhaps a possible percentage paid back to the Town.

Mr. Miller pointed out that he and Ms. Goodwin had talked previously about this situation. Ms. Goodwin stated she knew a number of groups that had cost support based on a three-year plan and at the fourth year the event was expected to be self-sustaining (with fees waived at a certain percentage each year). Mayor Kavanagh added that those communities using that system may have more employees on staff and Ms. Goodwin agreed since currently there were a lot of events staff covered on the week-ends that keep them busy, which causes staff shortages throughout the week.

Councilmember Yates suggested no up-front money would be required by the event but at the end a percentage would be paid to the Town. Ms. Goodwin wanted clarification that Council would then like to see the check and balances at the close of the event and Councilmember Yates added a head count of how many people attended would be sufficient.

Mayor Kavanagh mentioned to cover the 4th of July event the Town put up \$5,000 and then with the profits the Town got back their \$5,000 under Town Manager Ken Buchanan. Ms. Goodwin added that was not how it turned out and was an annual contribution. Mayor Kavanagh wanted to point out and suggest that that would be another concept to fund event start-ups.

Councilmember Leger wanted to be consistent and knew the Town had waived fees in the past and felt that seed money was important and felt this event could be a driver to develop a procedure to address these types of situations.

Councilmember Brown also noted the Town had waived a lot of fees including a large fee waived for the two-week long “Chinese Event”, which he attended with family; he expressed that it was a wonderful event that he paid to attend. Councilmember Brown stated the opinion this was a better event for the Town and Council should waive the fee for this organization for the first year.

Councilmember Magazine supported the policy in place and hoped Council did not make an exception.

Councilmember Leger asked how much money did the Town recoup on the 4th of July event and Ms. Goodwin answered that the Town recovered about all their expenses to break even.

Mayor Kavanagh asked for a motion.

Councilmember Brown **MOVED** to waive the fees for the Farm-2-Table event and Councilmember Hansen **SECONDED** the motion.

Mayor Kavanagh requested a roll call vote.

Councilmember Cassie Hansen	Aye
Councilmember Henry Leger	Aye
Vice Mayor Nick DePorter	Nay
Councilmember Cecil Yates	Nay
Councilmember Alan Magazine	Nay
Councilmember Dennis Brown	Aye
Mayor Linda Kavanagh	Nay

The motion **FAILED** (4-3).

Councilmember Cecil Yates asked if he could propose a new motion and Town Attorney Andrew McGuire answered that it would be a “Council Motion for Reconsideration”. Councilmember Cecil Yates decided to let the vote stand.

Mayor Kavanagh requested agenda items 22 and 23 be brought forward at this time due to attendees waiting to address this issue. No one objected to the Mayor’s request.

AGENDA ITEM #22 – CONSIDERATION OF RESOLUTION 2016-15, A DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF FOUNTAIN HILLS AND THE AMERICANA DEVELOPMENT & BUILDING CO., LLC TO ALLOW THE DEVELOPMENT OF “COPPER RIDGE”, A SENIOR LIVING FACILITY CONSISTING OF 132 INDEPENDENT LIVING UNITS, 60 ASSISTED LIVING UNITS, 52 MEMORY CARE UNITS, APPROXIMATELY 42,000 SQ FT OF COMMERCIAL/RETAIL IN TWO BUILDINGS, A 2 ACRE PARK, AND ASSOCIATED AMENITIES, LOCATED ON A 12.24 ACRE COMMERCIAL PROPERTY ON THE NORTH-EAST CORNER OF AVENUE OF THE FOUNTAINS AND WESTBY DRIVE. (CASE #DA2016-01)

Mayor Kavanagh stated there would be one staff report that would cover agenda items number 22 and 23.

Mr. Miller introduced Interim Development Services Director Robert Rodgers who would present the staff report on both items.

Mr. Rodgers reviewed information contained in a PowerPoint presentation (available on line or in the office of the Town Clerk). Mr. Rodgers stated this request was for a mixed-use project on vacant land behind the Basha’s shopping center at 16575 E. Palisades Boulevard with the frontage on Palisades Boulevard, Westby Drive, Avenue of the Fountains and La Montana Drive with the main access off of Westby Drive and La Montana and the commercial building facing Palisades Boulevard may have an access point from the Basha’s center. Mr. Rodgers continued that a large drainage area extended from the ThunderRidge Condominiums under Westby Drive through the property under Basha’s property parking area and towards La Montana Drive. He added that the existing zoning was C-2 commercial subject to this proposal with 162 assisted living units and 52 memory care units along with approximately 42,000 sq feet of commercial space with the two buildings, a community club house, a park and a large public art feature on the corner of Avenue of the Fountains and La Montana. Mr. Rodgers added that parking would be provided on four on-

site parking lots with additional on-street spaces along La Montana Drive. Mr. Rodgers made note of a slide showing the preliminary landscape plan that showed how the site would look when completed. The property as proposed would be divided into four lots according to the four phases of development.

- Lot 1 would contain the Independent Living facility, the Clubhouse, and the Park (Phase 1).
- Lot 2 would contain the Assisted Living/Memory Care/Medical Rehabilitation facility (Phase 2).
- Lot 3 would contain the Commercial Retail building on La Montana Drive (Phase 3A).
- Lot 4 would contain the Medical/Office building on Palisades Boulevard (Phase 3B).

Mr. Rodgers explained that the Independent Living facility would be four-stories tall with a maximum height of 54 feet along with cutting down about 14 feet from grade to sink the ground floor and lower the measured height down and below 40 feet, which was the maximum height in C-2 zoning along with additional height being addressed in the proposed Development Agreement. Included were the cut waiver and Special Use Permit to allow for residential use in the C-2 zoning. He stated the Memory Care would be a two-story building with the same architectural design as the first building located on the Avenue with the clubhouse located between the two buildings. Public art structure and additional diagonal parking spaces would be located on La Montana Drive.

Mr. Rodgers stated that the Planning and Zoning Commission approved the concept Plan for Americana Development and Building Company on July 14, 2016, to construct a mixed-use project on 12.24 acres subject to the following stipulations:

1. Approval of the Concept Plan was contingent upon Town Council's approval of a Development Agreement, which contains provisions for the Special Use Permit, the Cut Waiver, the Parking Revisions, the Replat, and Town Council's Concept Plan approval. Planning and Zoning Commission Concept Plan approval shall not take effect unless the Town Council, in their sole discretion, approves the Development Agreement.
2. The applicant shall provide a landscaping and lighting plan prior to the issuance of any building permit and no occupancy permit shall be issued prior to the completion of all site improvements as depicted and approved. Landscaping plans shall include irrigation details.
3. The applicant shall submit Site Improvement Plans. All utilities and drainage features must be installed and functional as shown on the improvement plans and approved by the Town Engineer prior to the issuance of any building permit.
4. No Certificate of Occupancy shall be issued prior to the completion of all site improvements as depicted and approved. Said improvements must be approved by both the Town Engineer and the Community Development Director.
5. All off-site drainage or other utility improvements required as conditions of this approval shall return any off-site disturbed areas to a condition similar to, or better than, their pre-existing state prior to the issuance of a Certificate of Occupancy. This shall include, but is not limited to re-grading, re-vegetating, and re-constructing moved or damaged structures or similar improvements.
6. All off-site improvements required as conditions of any approval regarding this project shall be either constructed, or fully bonded with a performance guarantee in a form and amount satisfactory to the Town Engineer and Town Attorney prior to the issuance of a Certificate of Occupancy.
7. Prior to the issuance of a Certificate of Occupancy, the applicants shall comply with the requirements of the Fountain Hills Sanitary District.
8. Prior to the issuance of a Certificate of Occupancy, the applicants shall comply with the requirements of the Fountain Hills Fire Department.
9. Prior to the issuance of a Certificate of Occupancy, the applicant shall comply with the requirements of the Fountain Hills Town Engineer.

10. Subject to the applicants fulfilling the Public Requirement pursuant to Section 19.05.1 of the Fountain Hills Zoning Ordinance prior to the issuance of the first Certificate of Occupancy.

Mr. Rodgers stated that staff recommended Council approve the Copper Ridge Development Agreement as proposed and approval of the Copper Ridge Concept Plan subject to the stipulations contained in the Planning and Zoning Commission's approval.

Mr. Rodgers informed the Council that the applicant was present and would give their presentation.

Mr. Dan Carter, Americana Development and Building Co., LLC gave a presentation and reviewed information contained in a PowerPoint presentation discussing the landscaping, architectural features, building height, and building elements (available on-line or in the office of the Town Clerk).

Mayor Kavanagh asked for questions or comments from Council.

Councilmember Yates requested Mr. Carter share the marketing study research on the need for Assisted Living facilities and the need for apartments in Fountain Hills. Mr. Carter explained that the focus on their study was Assisted Living and senior apartments and the study showed a larger demand than was being provided in the area. Councilmember Yates asked what the range was regarding the demand for a community size of Fountain Hill. Mr. Carter responded the demand was for more than what they were proposing.

Councilmember Leger thanked Mr. Carter for his presentation and asked Mr. Carter how many people would be hired and the type of employees for a projected total employment. Mr. Carter responded that there would be about a dozen people hired to support the Independent Living site and it had not been determined how many would be hired for the Assisted Living facility, but most likely would consist of management, maintenance staff, activities personnel and cleaning staff. Councilmember Leger asked if in certain areas there would be higher level positions such as doctors, physical therapist and Mr. Carter responded yes.

Councilmember Magazine asked Mr. Carter and also noted in the audience that Mr. Bart Shea was in attendance and he wondered if there would be a push between both parties for their facilities. Mr. Carter answered that based on the marketing study that would not happen since there was sufficient need in Fountain Hills for both facilities and in the marketing area.

Mayor Kavanagh asked Mr. Carter what was the minimum age limit on acceptance into the Independent Living facility unit and Mr. Carter answered 62 years or older.

Councilmember Magazine complimented Mr. Carter on his company's smooth process of presenting and working with staff.

Councilmember Hansen complimented Mr. Carter on the park like design of the project and asked if the public would have access to the grounds and open areas. Mr. Carter answered that the area and features of the facilities were intended for residing residents only, but he could not say if management would engage the community in some way, but everyday use would be for the residents living at the facility.

Mayor Kavanagh asked if there were speaker cards for this agenda item. Ms. Bender stated three speaker cards had been received.

Lana Murch, a Fountain Hills resident, thanked Mayor and Council for their service to the community. Ms. Murch pointed out sections of the Downtown Specific Plan dated 2009; the Land Use Map and the current Fountain Hills Strategic Plan adopted in 2010 and updated in 2013 and she stated one the plans direction was to promote a mixed-use core where residents could live, work, learn and play in an urban village and expressed that those documents should be used to guide the Council in their decision making process and should be used by them at the meetings. Ms. Murch noted this 12 acre parcel was a key component for the Town's downtown area and the plan clearly stated to be used as a mixed-use that compliments the range of activities to the downtown, residential and retail along with other service uses. She added that the west side was the base for entertainment and the Copper Ridge Development did not meet

that guideline. Ms. Murch suggested that Council layout a plan and should seek out developers to fill that plan and stated a vote “no” was the only choice that fit the adopted Strategic Plan and the Downtown Specific Plan.

Andrew Murch, a Fountain Hills resident, stated he also wanted to thank Council and everything they do for the Town. He then stated his motto was “the work and work the plan” and he also acknowledged language in the Strategic Plan addressing the economic vitality as the primary tenant of the Strategic Plan because it was fundamental to all other projects, processes and goals for the Town’s future. Mr. Murch stated that as our present economical model was depended heavily on sales taxes attention must be paid to Fountain Hills as the best suburb for families and with families come growth and support for the Town schools, our multi-generational image and year-round collection of sales taxes along with the Town’s retail and restaurant sales tax venues. He suggested the Council should promote the economic growth and support our community needs and successful businesses. Mr. Murch pointed out that the residents of this proposed facility would not have a need to go beyond their housing or off-site for groceries, meals, or shopping along with a park for residents only. He also suggested that the Town along with the Basha’s property owner bring in a developer that would fit the Strategic Plan along with the vision. Mr. Murch felt this application was misrepresented to the Town because the Maricopa County Recorder’s web site showed Basha still owned the property and Basha did not sign the application submitted for approval. Mr. Murch stated that a “no” vote was the only way to support the Fountain Hills Strategic Plan.

Gary Yarwood, a Fountain Hills resident and President of the Thunder Ridge Homeowners’ Association, pointed out the Council received a formal letter outlining the concerns of the homeowners’ particularly with the project’s living center building and he expressed his agreement with the two previous speakers. Mr. Yarwood questioned the request for a 14’ cut since he calculated a cut of at least 18’ was needed to accomplish what the applicant wanted to do. He pointed out that the developer picked the best view for the building with no view on the north, east or west side and the applicant was not in compliance with the standard 40’ height. Mr. Yarwood expressed their concern that their condo complex would look at a building 54’ in height along with substantial increase in traffic and noise activity due to the employee entrance being located off of Westby Drive. He also expressed his objection to a clause in the Development Agreement that allowed the developer to build at 54’ from the existing level of the property that increased the allowable height by 35% and reduced by 30% the number of parking spaces as required to support the development along with allowing a 70% reduction in the property line to the parking lot proposed along Westby Drive. He added that it was the condo resident’s opinion that if Council approved this project, as proposed, it would greatly devalue their 10 unit complex that borders the property on the west side of Westby Drive and other sites in Town and they recommended Council not approve the request.

Mayor Kavanagh asked for Council discussion on this item.

Councilmember Magazine addressed Mr. and Mrs. Murch’s input and agreed that if he was not on Council or a staff member he would also use the 2010 Strategic Plan and Downtown Plan as justification for turning down the Thunder Ridge project, but there appeared to be a problem since he felt these two documents were not as transparent as they should be to the public. Councilmember Magazine used the example in the Downtown Specific Plan that stated “Now therefore be resolved by the Mayor and Council for the Town of Fountain Hills” without stating the whole language, and the text ends by stating “herein by reference is hereby adopted” and that meant to him this was a legal document that the Council had to follow. He continued to explain that this was not the case since this document was to be used as a plan along with the 2010 Strategic Plan. Councilmember Magazine felt the public was mislead somewhat and explained that these documents conflicted with existing zoning and he pointed out in Chapter 12 of the Zoning Ordinance and what was allowed in a C-2 zoning district. He added that Council did not have the power to decided exactly what they wanted because the owners of the land with Council’s approval had the right to develop under the C-2 designation a list of possibilities for C-2 zoning that included child care center, variety stores, banks, barber shops, etc and the ordinance did not define a mixed-use development and he explained Council was bound by existing zoning.

Councilmember Leger stated he was sensitive to property owners, residents and zoning and questioned if there were something else placed in this C-2 zoning that would not be as attractive as the proposed project and during discussions on the Strategic Plan there was talk of a movie theater on the property or a large parking garage for this site. He noted correspondence he had received pointed out that a mixed-use was not allowed on this property and he had looked at Thunder Ridge Condominiums in a C-2 zoning and noted their builder had acquired a Special Use permit to build Thunder Ridge. He also noted that in C-2 zoning would allow for hotels, trade schools and other uses and as a Councilmember he had to weigh what would be best use since this was private property, zoned a specific way. He

questioned if there could be uses more detrimental to the area than what was being proposed and stated he understood their concerns regarding loosing views.

Councilmember Hansen agreed with both Councilmembers' comments and felt the Developer had really done a great job with the variation of height, open space, noting that the buildings were very attractive from the street and that she agreed that this was a valid use with a Special Use Permit that could have been much taller and intrusive. She added this project would be a good addition to the community.

Mayor Kavanagh agreed with Councilmember Hansen and added she also like the amenities. She had been questioned about the increasing the age group in Fountain Hills and she felt that some people in Fountain Hills may sell their larger homes and move into this facility, which would then open their homes to larger families. Mayor Kavanagh also noted she like the beautiful water feature planned along the road and again agreed it was a very well laid out plan.

Councilmember Yates asked the Town Attorney if there were any issues in the Development Agreement regarding the ownership prior to approval. Mr. McGuire answered that some purchases were made as the Development Agreement was in for approval and as part of the entitlement processes on the acceptance of the deal. Mr. McGuire added that the language in the Development Agreement was always used to allow for time to close on the property.

Councilmember Yates also explained that Council always had the Strategic Plan and Downtown Development Plan with them at the dais and referenced them when needed. Councilmember Yates also pointed out that this project was a tremendous buffer between Basha's and the condos and also included every aspect of a mixed-use project. Councilmember Yates complimented the developer and noted that company had a great track record.

Mayor Kavanagh asked Council for a motion on this agenda item.

Councilmember Brown made a **MOTION** to approve Resolution 2016-15 a Development Agreement at 16575 E. Palisades Boulevard as proposed and subject to the stipulations contained in the Planning and Zoning Commission's approval and Councilmember Hansen **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #23 – CONSIDERATION OF A CONCEPT PLAN FOR THE AMERICANA DEVELOPMENT & BUILDING CO., LLC TO ALLOW THE DEVELOPMENT OF “COPPER RIDGE”, A 12.24 ACRE COMMERCIAL PROPERTY ON THE NORTH-EAST CORNER OF AVENUE OF THE FOUNTAINS AND WESTBY DRIVE. (CASE #CP2016-014)

Mayor Kavanagh asked for Council discussion, and there was none. Mayor Kavanagh asked for speaker cards and Town Clerk Bevelyn Bender stated there were two.

Andrew Murch, a Fountain Hills resident, stated his surprise that the Strategic Plan was a bookcase document and he agreed that the Concept Plan was nice, looked very good and was a good project for our community but felt it was not the right project for that area. Mr. Murch agreed the Park Place Development would bring in younger families and pointed out the project also met the Strategic Plan and Area Specific Plan. Mr. Murch stated that the Town did not have enough affordable housing and that the larger homes that may become available would still not be affordable. Mr. Murch added that younger people wanted a vibrant and walkable community as stated in the Strategic Plan and with this proposal that would not happen. He also expressed this was fairly new Developer and lacked pass performances to evaluate. Mr. Murch questioned his ability to review staff's reference documents, which were not available on-line and recommended a “no” vote on this concept plan due to the lack of economic vitality and the vision Fountain Hills wanted to support the Town.

Lana Murch waived her option to speak on this agenda item. No further speaker cards were received on this item.

Mayor Kavanagh asked for Council discussion or a motion.

Councilmember Brown made a **MOTION** to approve the Concept Plan for the Americana Development and Building Co., LLC mixed-use project on 12.24 acres at 16575 E. Palisades Boulevard, as presented and subject to the stipulations outlined in the Planning and Zoning Commission approval and Councilmember Yates **SECONDED**.

Councilmember Hansen mentioned that in the Swaback Plan proposal it stated a plan depended on the design proposed and if the design fit into the overall use, even if some of the components were a little different from that vision plan, it was all about the design and how it would look.

The motion **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #20 –PUBLIC HEARING TO RECEIVE COMMENTS ON RESOLUTION 16-07, A PROPOSED AMENDMENT TO TOWN OF FOUNTAIN HILLS ZONING MAP. IF ADOPTED, THE AMENDMENT WOULD REZONE APPROXIMATELY 2.07 ACRES AT 11843 N. DESERT VISTA DRIVE, FROM THE C-1 ZONING DISTRICT TO THE C-3 ZONING DISTRICT. IF APPROVED, THE REZONING WILL ALLOW THE CONSTRUCTION OF AN AUTOMOBILE AND RV STORAGE FACILITY. (CASE #Z2016-06)

Mayor Kavanagh opened the Public Hearing at 8:55 p.m.

Mr. Miller introduced Interim Development Services Director Robert Rodgers who presented the staff report for agenda items 20 and 21, which included a PowerPoint presentation (available on-line or in the office of the Town Clerk).

Mr. Rodgers stated that that applicant was Gary D. Hays, PC on behalf of potential buyer Troy Herbie for a rezoning at the property located at 11843 N. Desert Vista Drive from C-1 to C-3 zoning for the purpose of constructing the “Desert Vista Storage Center” a motor vehicle storage facility. Mr. Rodgers noted that the properties to the west was zoned C-3 and to the south was zoned C-2 and north zoned R4RUPD and explained that R4 was multi-family zoning and RUPD was a county designation equivalent to the Town’s PUD. Mr. Rodgers added that storage units were not permitted in the C-1 zoning district but was permitted in C-3 and thus for the reason of this rezoning request. Mr. Rodgers added that the site was 2.7 acres and was mostly vacant land except for one building that in the past occupied a doctor’s office that had been vacant for over 20 years, run down and an attraction to kids. Mr. Rodgers continued that the storage center would have 86 units consisting of five single-story buildings at approximately 16 feet in height with each unit having a bay door. He stated that the existing building would remain as a rental office and maintenance facility for the site. Mr. Rodgers explained that the access would be off Desert Vista Drive and Saxon Drive and would also be gated. The two existing driveways located off Desert Vista and was circular would be closed and landscaped. Mr. Rodgers noted that the Planning and Zoning approved this plan subject to the approval from C-1 to C-3 and subject to the following stipulations.

1. Approval of the Concept Plan is contingent upon Town Council approval of the Zoning Map Amendment. Concept Plan approval shall not take effect unless the Town Council approves the Zoning Map Amendment.
2. The applicant shall provide a landscaping and lighting plan prior to the issuance of any building permit and no occupancy permit shall be issued prior to the completion of all site improvements as depicted and approved. Landscaping plans shall include irrigation details.
3. The applicant shall submit Site Improvement Plans. All utilities and drainage features must be installed and functional as shown on the improvement plans and approved by the Town Engineer prior to the issuance of any building permit.
4. No occupancy permit shall be issued prior to the completion of all site improvements as depicted and approved. Said improvements must be approved by both the Town Engineer and the Planning Administrator.
5. All off-site drainage or other utility improvements required as conditions of this approval shall return any off-site disturbed areas to a condition similar to or better than their pre-existing state prior to the issuance of a certificate of occupancy. This shall include, but is not limited to re-grading, re-vegetating, and re-construction moved or damaged structures or similar improvements.
6. All off-site improvements required as conditions of any approval regarding this project shall be either constructed, or fully bonded with a performance guarantee in a form and amount satisfactory to the Town Engineer prior to the issuance of an occupancy permit.

7. Prior to the issuance of a Certificate of Occupancy, the applicants shall comply with the requirements of the Fountain Hills Sanitary District.
8. Prior to the issuance of a Certificate of Occupancy, the applicants shall comply with the requirements of the Fountain Hills Fire Department.
9. Prior to the issuance of a Certificate of Occupancy, the applicants shall comply with the requirements of the Fountain Hills Town Engineer.
10. Subject to the applicants fulfilling the Public Art requirement pursuant to Section 19.05.1 of the Fountain Hills Zoning Ordinance prior to the issuance of the first Certificate of Occupancy.

Mr. Rodgers stated that the Planning and Zoning Commission also forwarded a recommendation to Council to approve Ordinance 16-07.

Councilmember Yates requested Mr. Rodgers explain why C-1 would not allow this request with a Special Use Permit. Mr. Rodgers explained that the Zoning Ordinance specially noted that in C-3 this use was permitted with a Special Use Permit, but the same language was not included in C-1.

No further questions were asked from Councilmembers.

Mayor Kavanagh requested the applicant address the Council. Mr. Garry Hays from the Law Office of Garry D. Hays, PC and located at 2198 E. Camelback Road, Phoenix stated that Mr. Rodgers did a great job covering the project and noted the stipulations had been accepted. Mr. Hays also pointed out that Mr. Mike Dohrmann who was the architect for the project was in attendance if Council had any questions on the design. Mr. Hays added that this was a great use for the community with very low traffic impact.

Mayor Kavanagh asked Ms. Bender if there were any speakers and she responded no speaker cards were received.

Mayor Kavanagh closed the public hearing at 9:02 p.m.

AGENDA ITEM #21 – CONSIDERATION OF ORDINANCE 16-07, A PROPOSED AMENDMENT TO TOWN OF FOUNTAIN HILLS ZONING MAP. IF ADOPTED, THE AMENDMENT WOULD REZONE APPROXIMATELY 2.07 ACRES AT 11843 N. DESERT VISTA DRIVE, FROM THE C-1 ZONING DISTRICT TO THE C-3 ZONING DISTRICT. IF APPROVED, THE REZONING WILL ALLOW THE CONSTRUCTION OF AN AUTOMOBILE AND RV STORAGE FACILITY. (CASE #Z2016-06)

Mayor Kavanagh asked for any Council discussion.

Councilmember Leger commented that previously proposed projects for the area had brought a lot of push-back from the residents across the wash and he acknowledged not receiving any input from those residents. He said that was a testimonial that the proposed use would be neighborhood friendly.

Mayor Kavanagh mentioned across the wash, residents were very happy that someone was going to utilize the space due to the condition of the area as it appeared to be getting worse over time.

Mayor Kavanagh asked for a motion.

Councilmember Hansen **MOVED** to accept Ordinance 16-07 as presented and Councilmember Cecil Yates **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #18 – CONSIDERATION OF RESOLUTION 2016-20, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE TOWN CLERK AND ENTITLED THE “TOWN OF FOUNTAIN HILLS BUSINESS REGULATIONS, AMENDED AND RESTATED AUGUST 18, 2016.”

Mayor Kavanagh stated there would be one staff report for agenda items 18 and 19.

Mr. Miller stated that in October 2015, staff had begun the process to update the Town Code concerning business practices and he further explained this was deemed to be housekeeping. Mr. Miller requested that Finance Director Craig Rudolphy address Council since he took the lead and worked with Town Attorney McGuire to bring this process to Council.

Mr. Rudolphy explained that staff had attempted to address licensing issues brought up in the past and that the packet contained a complete listing of those changes (available on-line or in the office of the Town Clerk). He stated that one section added was for Special Event Liquor Licenses and also included other clean-up items so to clearly define who would be required to obtain a Town Business License. Mr. Rudolphy asked if Council had any questions.

Mayor Kavanagh questioned if the Town performed back-ground checks and Mr. Rudolphy answered not for business licenses, but they performed a follow-up on Peddler's Licenses.

Mayor Kavanagh also questioned the Adult Business License and the required 18 years of age and questioned if that was typical for other cities and towns. Mr. Rudolphy referred her question to Town Attorney McGuire to address. Mr. McGuire stated that this portion of the code had not been changed and the reason was that adopting a regulation that involved this type issue would include a substantial process to determine negative affects; the code used was a model on this topic that adopted all of the specific findings and was uniform in every community he had seen, but he also did not know if other communities had changed the age. Mayor Kavanagh would like to see the age moved to 21, but she also did not feel this type of business would be a problem in Fountain Hills.

Mayor Kavanagh also asked about special events when workers would leave their booth and then obtained a ticket for a beer, she noticed that the revised code stated that the person working in a booth must remove shirts identifying them but could actually be an event shirt that everyone else could purchase at the event. She also requested this situation be clarified, so Mr. Rudolphy deferred to Rachael Goodwin, Recreation Supervisor, who answered that this applied to someone who was working the event and serving beer to customers and then when the worker was off duty and drinking a beer the worker should remove anything that would identify the individual as being associated with the event from their person (i.e. such as a name tag, changing their t-shirt, etc).

Mayor Kavanagh asked if there were any speaker cards or discussion from Council. Town Clerk Bender stated that none were received.

Councilmember Yates **MOVED** to approve Resolution 2016-20 and Vice Mayor Nick DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #19 – CONSIDERATION OF ORDINANCE 16-01, ADOPTING BY REFERENCE THE “TOWN OF FOUNTAIN HILLS BUSINESS REGULATIONS, AMENDED AND RESTATED AUGUST 18, 2016,” AND AMENDING THE FOUNTAIN HILLS TOWN CODE, CHAPTER 8, BUSINESS REGULATIONS.

Councilmember Magazine **MOVED** to approve Ordinance 16-01 and Councilmember Yates **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

AGENDA ITEM #24 - COUNCIL DISCUSSION/DIRECTION TO THE TOWN MANAGER

Mayor Kavanagh asked Council if there were any requests.

Councilmember Alan Magazine requested that all Town plans such as the Downtown Specific Plan and the 2010 Strategic Plan be revised to explain in their preamble on their use since he felt the plans were not transparent enough for the public. Councilmember Magazine asked staff to bring language back to Council making it clearer in the documents how they were to be used. Councilmember Magazine spoke of this issue on a previous agenda item this evening.

Mr. McGuire discussed an issue regarding Councilmember Magazine's request. He said when an amendment was made to the Downtown Plan, this document was specifically adopted by Council and incorporated into the General Plan Amendment and part of the General Plan adopted and voted on by the citizens of Fountain Hills and a component of the Town's General Plan. Councilmember Magazine asked if Council could add anything to these documents and Mr. McGuire answered "yes" by amendment and by requesting a hearing. Councilmember Magazine also requested changes to the Strategic Plan to allow for more transparency.

Mr. Miller pointed out that SPAC was in the process of updating their report and asked Councilmember Magazine if he would be willing to wait until Council received the updated version and then his request could be addressed to add language noting this was a planning document only. Councilmember Magazine agreed to Mr. Miller's suggestion.

Councilmember Yates requested staff look at the policy on waiving event fees and offered to be involved.

Mr. Miller stated that staff addressed fees this last fiscal year and explained that the events that had their fees waived had been co-sponsored events with the Town. Mr. Miller expressed that staff would bring back a proposal with direction to Council on how to address these types of request. Councilmember Yates would like specific charges so Council would have the fee components. Mr. Miller felt that what he was hearing was that each event should be determined on a case-by-case basis and he added that the Town Manager had the ability to waive fees on certain requests, but he did not feel comfortable taking action on the current request. Mr. Miller expressed that within three months staff would bring back a proposal. Councilmember Yates added that he wanted to leave in the authority for the Town Manager to waive fees on certain matters. Mayor Kavanagh clarified with Mr. Miller that there was an appeal process available and Mr. Miller agreed. Councilmember Magazine stated along with the Town Manager having the ability to waive fees he felt there still should be a criterion that was transparent and Mr. Miller agreed.

AGENDA ITEM #25 - SUMMARY OF COUNCIL REQUESTS AND REPORT ON RECENT ACTIVITIES BY THE MAYOR, INDIVIDUAL COUNCILMEMBERS, AND THE TOWN MANAGER.

Mayor Kavanagh stated she attended the Cookie & Cream fundraiser for the "Fearless Kitty Rescue" held at Sami's Fine Jewelry and expressed her appreciation on how the businesses helped out each other. She represented Fountain Hills at the opening of the "Hsing Yin Calligraphy Exhibit" at Phoenix City Hall and mentioned it was part of the Sister Cities program. Mayor Kavanagh also attended the "River of Time Museum Annual Fundraising Dinner" along with Councilmembers Yates and Vice Mayor DePorter and expressed her appreciation to Vice Mayor DePorter who worked with the kids at the event as part of the museum's summer program "In the Pipeline", which was a mobile exhibit designed to develop STEM skills.

Mayor Kavanagh helped cut the ribbon for the "Toastmasters" at the VFW head quarters and stated the VFW was looking for new members. She explained if anyone was interested they could visit the Fountain Hills "Toastmasters" website and finally she attended the Chamber Breakfast early this morning and noted there was an interesting presentation for our business community on digital marking by the company called "NOODLE".

Councilmember Hansen commented on the passing of her husband Bruce Hansen and pointed out that Bruce had served as a public official for 20 years. Councilmember Hansen stated she wanted to take this opportunity to extend heartfelt thanks for all of the overwhelming responses and support, which included flowers, plants, cards and wonderful comments. She said she wanted to say "thank you" to our wonderful community. Mayor Kavanagh thanked Councilmember Hanson.

AGENDA ITEM #26 - ADJOURNMENT

Councilmember Yates **MOVED** to adjourn the meeting at 9:17 PM and Vice Mayor DePorter **SECONDED** the motion, which **CARRIED UNANIMOUSLY** (7-0).

TOWN OF FOUNTAIN HILLS

By _____
Linda M. Kavanagh, Mayor

ATTEST AND
PREPARED BY:

Bevelyn J. Bender, Town Clerk

CERTIFICATION

I hereby certify that the foregoing minutes are a true and correct copy of the minutes of the Executive Session, held in the Fountain Conference Room – 2nd Floor and Regular Session held by the Town Council of Fountain Hills in the Town Hall Council Chambers on the 18th day of August, 2016. I further certify that the meeting was duly called and that a quorum was present.

DATED this 1st day of September, 2016.

Bevelyn J. Bender, Town Clerk